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ABSTRACT

A study of the legal and regulatory barriers to the expansion of family day care in New York State identified the following as primary barriers: a fragmented licensing system, multiple agency regulation, attempted regulation by municipalities through exclusionary zoning, and widespread provider noncompliance and lack of enforcement of the licensing law. The problem of obtaining liability insurance for family day care providers was also identified as a major practical barrier to the expansion of licensed family day care. This executive summary of the findings (1) defines family day care; (2) indicates why the State of New York has an acute shortage of family day care; (3) identifies the legal barriers to the expansion of family day care services; and (4) offers eight recommendations thought to be the basis for a rational and effective regulatory system. (RH)

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EXECUTIVE SUMMARY

Half of all married women with children less than a year old are in the workforce and 71 percent have full time jobs. This number is increasing as the labor force participation of women with preschool age children continues to rise. For the vast majority of these working parents, quality, affordable child care is hard to find. In New York State, there is a combined total of 132,000 approved child care slots -- in day care centers, nursery schools, and family day care homes -- for the estimated 364,000 young children in need of care because their parents are working.

WHAT IS FAMILY DAY CARE?

Family day care, care of children provided in a caregiver's home, is virtually the only child care option available for many working parents, particularly those who have infants and toddlers. It offers many qualities parents want for their very young children: it is warm and homelike, flexible and close by. And it is often more affordable than other forms of care. But the supply of family day care homes falls far short of the need. In 1985 there was a total of 3,625 legal family day care homes in the entire State of New York. Of these, fewer than one in ten -- 391 homes -- were available for working parents who were ineligible for publicly funded day care, or who were eligible but were unable to gain access to limited day care funding.

The shortage of legal family day care in New York is both extreme and unusual. California, for example, with a population of 23 million, has 32,000 regulated homes, close to ten times New York's 3,600 homes for a population of 17 million. Massachusetts, a state of 5.7 million, has 9,000 legal homes, more than double New York City's paltry total.

WHY DOES NEW YORK LAG SO FAR BEHIND?

Child Care, Inc. sought to answer this question in the spring of 1985. As a child care resource and referral agency, we confront this problem daily when parents call us for information about available family day care for their children. Like our counterparts throughout the State, we can only refer parents to licensed child care arrangements.

Together with the members of the New York State Child Care Coordinating Council and the New York City Family Day Care Task Force, we began to explore the reasons why there was such an acute shortage of family day care in New York State. Our initial research pointed to the existing regulatory system governing family day care. With a grant from IBM through Work/Family Directions, we undertook a study to examine this system.

The purpose of the study was threefold: (1) to analyze the legal and regulatory framework for family day care in New York State; (2) to identify the legal barriers that impeded the expansion of family day care; and (3) to develop strategies for resolving these problems. The research involved an intensive review of laws and regulations, a survey to identify the impact of the system on family day care throughout the state, and interviews with a wide range of public officials, providers, child care experts, and child care advocates.

WHAT ARE THE BARRIERS?

This report paints a disturbing picture of a regulatory system that discourages provider participation and inhibits the expansion of care. The consequence is a situation in which underground family day care flourishes while state and local authorities cast a blind eye.

There is a widespread ignorance about family day care regulatory requirements. Many providers simply do not know that they must be certified to care for children. At the same time there are no formal incentives to encourage providers to seek certification. Those few providers who find their way through the regulatory maze may wait for months until their applications are processed because there is a shortage of staff to certify the current providers.

The primary legal barriers to the expansion of family day care services are:

- A fragmented licensing system in which responsibility is split between state and local authorities in each community and in which the licensing agency governing family day care differs depending on whether the care is subsidized or non-subsidized.

- Multiple agency regulations which are overlapping, often contradictory, and impede the smooth operation of the system, causing a single family day care provider to comply with regulations of as many as four different public agencies.

- The application of local zoning ordinances to exclude or limit the availability of family day care in residential neighborhoods. This serves to deter providers from attempting to become licensed.

- The lack of meaningful penalties for non-compliance, allowing providers who do not meet basic health and safety requirements to continue to care for children without fear of sanctions.

HOW CAN THE SYSTEM BE CHANGED?

It is clear that the system needs reform. Expansion of staff alone will not solve these problems. We propose changes to create a regulatory system based on a partnership among the principal participants -- providers, parents, child care resource and referral agencies and the State. The following recommendations for such a system strive to strike a balance between under-regulation that will fail to protect children and overregulation that will restrict the availability of legal care.

1. The legislature should enact legislation mandating a single licensing system for family day care.

The system can allow for some variations based on local conditions, and for enforcement through any of several local or state agencies, so long as standards and enforcement mechanisms are subject to guidance by a single, statewide body.

There is no rationale for maintaining two separate systems for licensing family day care; one for those children who are eligible for publicly funded care, and another for children of working parents.

2. The legislature should adopt language that clearly overrides any attempt by municipalities to restrict the availabiality of family day care in residential neighborhoods.

Local zoning undermines the expansion of legal family day care. Seeking variances from zoning can impose an impossible burden of time and paper work on a family day care provider.

Legislation that precludes localities from treating family day care homes in any way other than single family residential dwellings has been adopted in at least five states. Minnesota and California, for example, have enacted legislation that legal family day care homes should be zoned as residential use of property.

3. State regulations should be sufficiently specific and comprehensive to preempt the need for additional regulations by local health, building, and fire departments.

Statutory language should be enacted to clarify that the use of a residence as a family day care home should be considered a residential use of property for the purpose of local ordinances and that no city, county, or district can adopt or enforce any local ordinance or local rule or regulation that is inconsistent with state standards except where such rules apply to all single family homes.

The existing system allows municipal agencies, sometimes several different ones, to establish and impose their own standards on family day care. The social services regulation which provides for multiple agency regulation should be repealed and replaced with a clear mandate to one agency to provide uniform and rational standards for the protection of children in family day care homes.

4. Obtaining certification should be a simple and relatively quick procedure.

The cumbersome certification system deters provider compliance with the law. Forms and procedures should be simple, and adequate staff must be available to respond quickly to requests for licensing.

5. State and local governments should initiate public education campaigns to inform providers and parents about certification requirements.

One of the principal reasons for provider non-compliance with the law is ignorance about current certification requirements. Public education campaigns for providers and parents should emphasize the need for certification as well as its advantages. A public education campaign would also encourage providers and parents to make contact with local child care resource and referral agencies and family day care networks. Both organizations can offer otherwise isolated providers a variety of services to improve the quality of care, and their working conditions. These services include training, parent referrals, and technical advice. These organizations can also offer parents simple clear information on how to choose quality care.

6. The State should establish clear complaint procedures for family day care.

Responsibility for responding to complaints in the existing system is divided among many licensing systems and agencies. The process for making a complaint should be simple, visible, and straightforward. One possibility might be the creation of two toll-free state numbers, one for complaints, the other for information about family day care.

7. The State should establish effective penalties and enforcement measures.

The only enforcement measure available in the existing system is an injunction filed by the State Commissioner of Social Services to enjoin a family day care provider from offering care. There are no sanctions for providers who operate without certification. The State should establish reasonable penalties such as warnings, summons, appearance tickets, and fines for providers who fail to obtain certification. Cease and desist orders might be an option in emergency cases. Until new regulations are enacted, it might be practical to offer amnesty for underground providers. After reforms have been adopted, however, sanctions should be applied to providers if they fail to obtain certification within a specific period.

8. The legislature should enact legislation to indicate that group family day care, the care of up to twelve children by two adults in the care provider's home, is a formally recognized category of care. The State Department of Social Services should promulgate comprehensive regulations for group family day care that eliminate the necessity for additional municipal regulations.

Group family day care offers another important option to providers who want to expand the services provided in their own homes. It allows two or more providers to care for a group of children in their home. Group family day care should be considered residential use of property in a single family dwelling for purposes of local regulations. The recommendations regarding public education and enforcement apply equally to group family day care.

The State recognized the importance of this option when it enacted a group family day care pilot project in 1984. This pilot has demonstrated that group family day care providers will seek certification once it is available.

SUMMARY

These recommendations constitute the basis for a rational and effective system for regulating family day care. They are consistent with the intended purposes of regulating any system -- to insure that minimum standards are met and that consumers are protected from injury and harm.

Family day care should be no exception to this rule. Its consumers are children, and they deserve the very best we have to offer.

* * * *

We wish to acknowledge the work of Karen Norlander, an attorney devoted to the rights of families and children, who is the author of this study. Her legal research and analysis have enlightened all of us working to improve and expand the child care system in New York.

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